

1 Kian Mottahedeh (SBN 247375)
2 John D. Sarai (SBN 259125)
3 **SM LAW GROUP, APC**
4 16130 Ventura Blvd., Suite 660
5 Encino, CA 91436
6 Tel: (818) 855-5950
7 Fax: (818) 855-5952
8 kian@smlawca.com
9 john@smlawca.com

10 Attorneys for Plaintiff,
11 MARTHA CABRERA

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MARTHA CABRERA,

Plaintiff,

vs.

CHASE BANK USA, N.A.; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 2:18-cv-6860

**COMPLAINT AND DEMAND FOR
JURY TRIAL FOR VIOLATIONS
OF:**

- 1. THE TELEPHONE CONSUMER
PROTECTION ACT
[47 U.S.C. § 227 *et seq.*]**
- 2. THE ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT
[CAL. CIV. CODE § 1788 *et seq.*]**
- 3. RIGHT TO PRIVACY
[INTRUSION]**

COMPLAINT FOR DAMAGES

INTRODUCTION

1. Martha Cabrera (hereinafter “Plaintiff”) brings this action to secure redress from unlawful credit and collection practices engaged in by Chase Bank USA, N.A. (hereinafter “Defendant”). Plaintiff alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), CAL. CIV. CODE § 1788 *et seq.*, and Plaintiff’s reasonable Right to Privacy. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment and delegates rulemaking authority to the Federal Communications Commission (“FCC”). Among other things, the TCPA prohibits calls or texts to a consumer’s cellular telephone through the use of automatic dialers without the consumer’s prior express consent. The RFDCPA prohibits debt collectors from engaging in abusive, deceptive and unfair practices in connection with the collection of consumer debts.

VENUE AND JURISDICTION

2. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 as Plaintiff’s claims arise under the laws of the United States. Jurisdiction in this Court is also proper pursuant to 28 U.S.C. § 1367 as Plaintiff’s RFDCPA claim is so related to Plaintiff’s TCPA claim that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the acts and transactions alleged in this Complaint occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

4. Plaintiff Martha Cabrera is an individual who resides in Los Angeles, Los Angeles County, California 91352.

1 5. Plaintiff is a natural person obligated or allegedly obligated to pay a
 2 debt, and from whom a debt collector seeks to collect a consumer debt which is
 3 due and owing or alleged to be due and owing from such person. Thus, Plaintiff is
 4 a "debtor" as defined by the RFDCPA, CAL. CIV. CODE § 1788.2(h).

5 6. Defendant Chase Bank USA, N.A. is a federally chartered bank,
 6 registered under the laws of the State of Delaware. Defendant's principal place of
 7 business is located at 270 Park Avenue, New York, NY 10017-2070. Upon
 8 information and belief, Defendant's Registered Agent for Service of Process is
 9 The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street,
 10 Wilmington, DE 19801.

11 7. Defendant regularly engages in the collection of debt by telephone in
 12 several states including, California. In the ordinary course of business, regularly,
 13 on behalf of itself or others, Defendant engages in debt collection and thus,
 14 Defendant is a "debt collector" as defined by the RFDCPA, CAL. CIV. CODE §
 15 1788.2(c).

16 8. The true names and capacities, whether individual, corporate, or in any
 17 other form, of Defendants DOES 1 through 10, inclusive, and each of them, are
 18 unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff
 19 will seek leave to amend this Complaint to show the true names and capacities of
 20 DOES 1 through 10 should they be discovered.

21 **FACTUAL ALLEGATIONS**

22 9. Within one (1) year prior to the filing of this action, Defendant placed
 23 collection calls to Plaintiff, seeking and demanding payment for an alleged debt
 24 owed.

25 10. The debt Defendant is attempting to collect is an alleged obligation of a
 26 consumer to pay money arising out of a transaction in which the money, property,
 27 insurance or services which are the subject of the transaction are primarily for
 28 personal, family, or household purposes, whether or not such obligation has been

1 reduced to judgment. As such, it is a “debt” as defined by the FDCPA, 15 U.S.C.
2 § 1692a(5), and a “consumer debt” as defined by the RFDCPA, Cal. Civ. Code §
3 1788.2(f).

4 11. Within one (1) year prior to the filing of this action, Defendant regularly
5 and repeatedly called Plaintiff at, but not limited to, Plaintiff’s cellular telephone
6 number (323) 702-7015.

7 12. Upon information and belief, Defendant continuously and repeatedly
8 called Plaintiff at Plaintiff’s cellular telephone number from telephone numbers:
9 (210) 520-2593, (407) 732-2414, (407) 732-2415, and (407) 732-2417. At all
10 times relevant, Defendant owned, operated, and/or controlled telephone numbers:
11 (210) 520-2593, (407) 732-2414, (407) 732-2415, and (407) 732-2417.

12 13. Within one (1) year prior to the filing of this action, Defendant caused
13 Plaintiff’s telephone to ring repeatedly and continuously in order to annoy
14 Plaintiff.

15 14. Within one (1) year prior to the filing of this action, Defendant
16 communicated with Plaintiff with such frequency as to be unreasonable under the
17 circumstances and to constitute harassment.

18 15. Defendant called Plaintiff over ninety-five (95) times.

19 16. Defendant repeatedly called Plaintiff at least five (5) times in a single
20 day. For instance and without limitation, Defendant called Plaintiff at least five
21 (5) times on August 5, 2017, August 7, 2017, and August 9, 2017.

22 17. Defendant called Plaintiff despite Plaintiff requesting the calls to stop.

23 18. On July 28, 2017, at approximately 8:13 a.m., Defendant called Plaintiff
24 at Plaintiff’s cellular telephone number (323) 702-7015 from Defendant’s
25 telephone number (407) 732-2414. Plaintiff answered Defendant’s telephone call
26 and spoke with a representative of Defendant. Plaintiff requested that Defendant
27 stop calling Plaintiff.
28

1 19. Subsequent to Plaintiff's request on July 28, 2017, at approximately 8:13
2 a.m., Defendant called Plaintiff's cellular telephone number (323) 702-7015 no
3 less seventy (70) times.

4 20. Each call that Plaintiff answered from Defendant began with a beep,
5 click, or long pause before it was answered by a live operator, or was
6 automatically dropped.

7 21. At all times relevant to this action, Defendant has been subject to, and
8 required to abide by, the laws of the United States, which included the TCPA and
9 its related regulations that are set forth at 47 C.F.R. § 64.1200 ("TCPA
10 Regulations"), as well as the opinions, regulations and orders issued by the courts
11 and the FCC implementing, interpreting and enforcing the TCPA and the TCPA
12 regulations.

13 22. At all times relevant to this action, Defendant owned, operated and or
14 controlled an "automatic telephone dialing system" as defined by TCPA 47 U.S.C.
15 § 227(a)(1) that originated, routed and/or terminated telecommunications.

16 23. Within four (4) years prior to the filing of this action, Defendant called
17 Plaintiff at Plaintiff's cellular telephone number multiple times using an artificial
18 prerecorded voice or using equipment which has the capacity to store or produce
19 telephone numbers to be called, using random or sequential number generator and
20 to dial such numbers, also known as an "automatic telephone dialing system" as
21 defined by TCPA 47 U.S.C. § 227(a)(1)(A) and (B).

22 24. Defendant never received Plaintiff's consent to call Plaintiff on
23 Plaintiff's cellular telephone using an "automatic telephone dialing system" or an
24 "artificial or prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1).

25 25. Assuming Defendant received Plaintiff's consent to call Plaintiff on
26 Plaintiff's cellular telephone using an "automatic telephone dialing system" or an
27 "artificial or prerecorded voice" as defined in 47 U.S.C. § 227 (a)(1), this consent
28 was revoked on July 28, 2017.

26. Defendant is not a tax exempt nonprofit organization.

27. Defendant's violation of the TCPA was willful. Defendant's violation of the TCPA was willful because Plaintiff repeatedly requested that Defendant cease calling Plaintiff.

28. Defendant's violation of the TCPA was knowing. Defendant's violation of the TCPA was knowing because Defendant has repeatedly been the subject of litigation due to its use of an automatic telephone dialing system.

29. Within four (4) years prior to the filing of this action, Defendant willfully and/or knowingly contacted Plaintiff no less than seventy (70) times at Plaintiff's cellular telephone using an "automatic telephone dialing system" or using an "artificial or prerecorded voice" in violation of the TCPA.

30. The natural and probable consequences of Defendant's conduct were to unjustly condemn and vilify Plaintiff for her non-payment of the debt she allegedly owed.

31. The natural and probable consequences of Defendant's conduct were to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

32. Defendant's conduct as described in detail above amounts to an unfair or unconscionable means to collect or attempt to collect the alleged debt.

33. Defendant's conduct as described in detail above was done to harass, oppress, or abuse Plaintiff.

34. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

FIRST CAUSE OF ACTION

(Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*)

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

1 36. Defendant violated the TCPA. Defendant's violations include, but are
2 not limited to the following:

- 3 a. Within four (4) years prior to the filing of this action, on multiple
4 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)
5 which states in pertinent part, "It shall be unlawful for any person
6 within the United States . . . to make any call (other than a call made
7 for emergency purposes or made with the prior express consent of the
8 called party) using any automatic telephone dialing system or an
9 artificial or prerecorded voice — to any telephone number assigned to
10 a . . . cellular telephone service . . . or any service for which the called
11 party is charged for the call."
12 b. Within four (4) years prior to the filing of this action, on multiple
13 occasions, Defendant willfully and/or knowingly contacted Plaintiff at
14 Plaintiff's cellular telephone using an artificial prerecorded voice or
15 an automatic telephone dialing system and as such, Defendant
16 knowing and/or willfully violated the TCPA.

17 37. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is
18 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for
19 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds
20 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled
21 to an award of one thousand five hundred dollars (\$1,500.00), for each and every
22 violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

23 38. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct
24 in the future.

25 **SECOND CAUSE OF ACTION**
26 **(Violation of the Rosenthal Fair Debt Collection Practices Act,**
27 **California Civil Code § 1788 *et seq.*)**

28 39. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

1 40. Defendant violated the RFDCPA. Defendant's violations include, but
2 are not limited to, the following:

- 3 a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing the
4 telephone to ring repeatedly or continuously to annoy the person
5 called;
- 6 b. Defendant violated CAL. CIV. CODE § 1788.11(e) by communicating
7 with the Plaintiff with such frequency as to be unreasonable and to
8 constitute harassment; and
- 9 c. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or
10 attempting to collect a consumer debt without complying with the
11 provisions of Sections 1692b to 1692j, inclusive, of Title 15 of the
12 United States Code (the Fair Debt Collection Practices Act):
- 13 i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
14 U.S.C. § 1692d by engaging in conduct, the natural
15 consequence of which is to harass, oppress or abuse any
16 person in connection with the collection of the alleged debt;
- 17 ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
18 U.S.C. § 1692d(5) by causing the phone to ring or engaging
19 any person in telephone conversations repeatedly; and
- 20 iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
21 U.S.C. § 1692f of the FDCPA by using unfair or
22 unconscionable means in connection with the collection of an
23 alleged debt.

24 41. As a result of the foregoing violations of the RFDCPA, Defendant is
25 liable to Plaintiff for actual damages, statutory damages, and attorney's fees and
26 costs.
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THIRD CAUSE OF ACTION
(Violation of the Right to Privacy)

42. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

43. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon seclusion as “[o]ne who intentionally intrudes... upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person”.

44. Defendant violated Plaintiff’s privacy. Defendant’s violations include, but are not limited to, the following:

- a. Defendant intentionally intruded upon Plaintiff’s solitude, seclusion or private affairs and concerns. Defendant’s intrusion would be highly offensive to a reasonable person and unwarranted and unjustified.
- b. Defendant intentionally intruded, physically or otherwise, upon Plaintiff’s solitude and seclusion by engaging in harassing phone calls in an attempt to collect on an alleged debt despite having unequivocally revoked consent to be called.
- c. The number and frequency of the telephone calls to Plaintiff by Defendant constitute an intrusion on Plaintiff’s privacy and solitude.
- d. Defendant’s conduct would be highly offensive to a reasonable person as Plaintiff received calls that often interrupted Plaintiff’s work and sleep schedule.

45. Defendant’s acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

46. As a result of Defendant’s violations of Plaintiff’s privacy, Defendant is liable to Plaintiff for actual damages. If the Court finds that the conduct is found to be egregious, Plaintiff may recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Court should enter judgment in favor of Plaintiff and against Defendant for:

- A. An injunction prohibiting Defendant from contacting Plaintiff on Plaintiff's cellular telephone using an automated dialing system pursuant to 47 U.S.C. § 227(b)(3)(A);
- B. Actual damages pursuant to CAL. CIV. CODE § 1788.30(a);
- C. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests five hundred dollars (\$500.00) in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- D. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble damages, as provided by statute, of one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);
- E. Statutory damages pursuant to CAL. CIV. CODE § 1788.30(b);
- F. As a result of Respondent's malicious and oppressive invasion of Claimant's privacy, Claimant is entitled to and requests punitive damages pursuant to CAL. CIV. CODE § 3294(a);
- G. Costs and reasonable attorney's fees pursuant to CAL. CIV. CODE § 1788.30(c);
- H. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and
- I. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Martha Cabrera, demands trial by a jury in this action.

RESPECTFULLY SUBMITTED,
SM LAW GROUP, APC

DATED: August 9, 2018

By: /s/ Kian Mottahedeh
Kian Mottahedeh, Esq. (SBN 247375)
Attorneys for Plaintiff,
MARTHA CABRERA

SM LAW GROUP, APC
16130 Ventura Blvd., Suite 660
Encino, CA 91436